

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(SPECIAL ORIGINAL JURISDICTION)

TUESDAY, THE FIFTEENTH DAY OF MARCH, TWO
THOUSAND AND FIVE

PRESENT

The Honourable Sri Justice V.Eswaraiah

WRIT PETITION No. 8908 OF 2004

BETWEEN:

K.V.Mohan Rao S/o Late Sri Gopal Rao, aged about 58 years, Class-I Contractor, R/o Visakhapatnam.

...Petitioner

And

1. The Government of Andhra Pradesh rep.by its Principal Secretary, Industries and Commerce (Tex) Department, Secretariat Buildings, Saifabad, Hyderabad.

(Amended as per order dt.7-03-2005 in WPMP No.31433/2004)

2. M/s.Nandyal Cooperative Spinning Mills Ltd. Nandyal rep.by its Managing Director Sri Nandyal, Kurnool District.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring that the G.O.Rt.No.639 Industries & Commerce (Tex) Department, dated 6-10-2004 as arbitrary, illegal, without

jurisdiction, null and void capricious and opposed to the very purpose and the provisions of Act 19 of 1971 and consequently direct the III-Additional District Judge, Nandyal to proceed with the Execution Proceedings in E.P.no.2 of 2004 in O.p.No.167 of 1988 without giving effect to the said Government Order.

(Amended as per order in WPMP No.2873/05, dt.21.2.2005)

For the Petitioner: Mr.T.S.Anand, Advocate.

For the Respondents: G.P., for Industries and Commerce.

The Court made the following :

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ORDER:

The petitioner questions the order of the Government issued in G.O.Rt.No.639, Industries & Commerce (Tex) Department, dated 6-10-2004, notifying the second respondent i.e., M/s.Nandyal Co-operative Spinning Mills Limited, Nandyal, Kurnool District to be a relief undertaking for a further period of one year from 25-9-2004 as illegal, arbitrary, without jurisdiction and ultravires to the provisions of the Andhra Pradesh Relief Under Takings (Special Provisions) Act 19 of 1971.

The petitioner initially questioned the G.O.Rt.No.873, Industries and Commerce (Tex) Department, dated 19-11-2003, but during the pendency of the Writ Petition, the first respondent issued the impugned G.O.Rt.No.639, dated 6-10-2004 and therefore, the petitioner was permitted to amend the writ prayer questioning the said Government Order.

The undisputed facts are that the petitioner entered into a contract with the Nandyal Co-operative Spinning Mills Limited, Nandyal-the second respondent herein on 11-2-1986 for construction of ancillary buildings of the second respondent and the work was completed by 30-11-1987. He submitted the final bill on 29-2-1998. As the final bill was not paid, the contractor raised a dispute and filed O.P.No.167 of

1988 before the Subordinate Judge, Nandyal for appointment of sole Arbitrator. The Court appointed the sole Arbitrator on 12-3-1991. Aggrieved by the said order of the Subordinate Judge, Nandyal, the second respondent filed C.R.P.No.1381 of 1991 on the file of this Court, which was dismissed, confirming the appointment of sole Arbitrator, against which, the second respondent filed Civil Appeal No.938 of 1993 in the Supreme Court of India and the Apex Court also upheld the order of the Subordinate Judge, Nandyal by dismissing the Civil Appeal on 9-3-1993.

The sole Arbitrator after giving opportunity to both parties, registered the Arbitration Case No.10 of 1992, against which, the second respondent filed O.P.No.277 of 1993 on the file of Subordinate Judge, Nandyal to revoke the authority of sole Arbitrator, but the same was dismissed on 18-7-1995 and the Revision filed against the said order was also dismissed. Accordingly, the second respondent participated in the arbitration proceedings and the sole Arbitrator passed the award on 27-02-1999, allowing certain claims and disallowed certain other claims.

The Execution Petitions filed by the petitioner were dismissed on some or other grounds and ultimately, the petitioner filed E.P.No.91 of 2002 before the Principal District Judge, Kurnool, which was transferred to the newly constituted Court of III-Additional District Judge, Kurnool at Nandyal and the same was renumbered as E.P.2 of 2004. In the said pending E.P., the second respondent filed a counter, stating that the Government issued order in G.O.Rt.No.873, Industries and Commerce (Tex) Department, dated 19-11-2003, declaring the second respondent as Relief Undertaking, therefore, the E.P., is not maintainable. During the pendency of the writ petition, the period of said Government Order was elapsed and G.O.Rt.No.639, dated 6-10-2004 was issued and therefore, the petitioner was permitted to amend the prayer to question the said G.O.Rt.No.639, dated 6-10-2004.

It is the case of the second respondent that the second respondent is

a Society registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964. The total value of the shares of the society is Rs.651.50 lakhs and the Government of Andhra Pradesh is the major share-holder and owns shares worth Rs.631.50 lakhs. The society has been performing the activities as a body registered under the A.P. Co-operative Societies Act, 1964 and went to commercial production in October 1988, but due to various factors, the society has not been making profits. With a view to improve the financial viability and avoid unemployment, the Government of Andhra Pradesh in exercise of powers conferred by Andhra Pradesh Relief Undertakings (Special Provisions) Act, 1971 (Act No.19 of 1971), issued G.O.Rt.No.356, Industries and Commerce (Tex) Department, dated 17-5-1977, declaring the said society as a Relief Undertaking for a period of one year from 17-6-1997.

Admittedly, the Government issued eight Government Orders, and the validity of each Government Order is one year declaring the second respondent as Relief Undertaking under Section 3(2) of Act 19 of 1971 as detailed below:

Sl.No.	G.O.No.& Date	Period of Relief	From	To
1.	60 I&C(Tex3), 24-02-1996	One year	26-2-1996	25-2-1997
2.	356 I&C(Tex), 17-5-1997	One year	17-5-1997	16-5-1998
3.	126, I&C(Tex), 24-2-1998	One year	17-5-1998	15-5-1999
4.	80, PEI Dept, 26-8-2000	One year	26-8-2000	25-8-2001
5.	116 PE1 Dept, 25-9-2001	One year	25-9-2001	24-9-2002
6.	8621 I &C (Tex) 23-9-2002	One year	25-9-2002	24-9-2003
7.	873, I&C(Tex) 19-11-2003	One year	25-9-2003	24-9-2004
8.	639, I&C(Tex), 6-10-2004	One year	25-9-2004	24-9-2005

Earlier, the petitioner filed W.P.No.2429 of 2002 to declare the action of the Government in issuing G.O.Rt.No. 116, Public Enterprises (I) Department, dated 25-9-2001 mentioned at Sl.No.5 as illegal, void

and opposed to the very purpose of the Act, 19 of 1971 and consequently to direct the principal District Judge, Kurnool to proceed with the execution proceedings in E.P.No.147 of 2001 in O.P.No.167 of 1988 without giving effect to the said G.O.Rt.No.116, dated 25-9-2001. The said writ petition was dismissed on 18-7-2002 on merits, holding that the said Government Order is issued strictly in compliance with Act, 19 of 1971, therefore, as per the said notification, the E.P., filed by the petitioner cannot be executed. It is further observed that the State Government is competent to issue directions to sell the assets of the second respondent spinning mill, which will serve the purpose and the intendment of the Act, 19 of 1971 namely to conduct certain industrial undertakings as a measure of unemployment relief or of preventing unemployment in the State for the reason that if the unit is sold by way of bids under various decrees, awards etc., there is no possibility of reviving the unit by the prospective purchaser, but whereas if the unit as such is sold to a single entrepreneur, there is every possibility of reviving the unit by the purchaser, which would generate employment. If the unit is sold by the Registrar of Co-operative Societies, the petitioner can very well claim the amount due under the award from the proceedings of the sale of assets of the second respondent mill in order of priority. When the State Government made all its efforts to revive the unit by issuing four notifications earlier giving temporary relief under Section 4, the same notifications were continued and mere taking a decision to sell the assets of the second respondent spinning mill do not vitiate the notifications issued from time to time. Accordingly, this Court held in the said writ petition that the said Government Order cannot be termed as either arbitrary or illegal.

In the present writ petition, the petitioner questions the impugned Government Order on the ground that the G.O.Rt.No.639, dated 6-10-2004 is admittedly issued by the Government in exercise of the powers conferred by Sub Sections (1) and (2) of Section 3 of the Act, 19 of 1971 for a period of one year and admittedly, the Government issued seven such Government Orders earlier for a period of seven

years and the Government have no power to issue the said Government Orders after total period of exceeding five years.

Under Sub Section (1) of Section 3 of the said Act 19 of 1971, if at any time, it appears necessary to the Government, they may issue a notification, declaring any industrial undertaking from the date specified for the purpose in the notification, be conducted to serve as a measure of unemployment relief or of preventing employment and every such undertaking shall be deemed to be a relief undertaking for the purpose of the Act.

As per Sub Section (2) of Section 3; the notification shall have the effect for the period not exceeding twelve months as specified in the notification, but it shall be renewable by like notifications from time to time for further periods not exceeding twelve months at a time. However, all the periods in the aggregate do not exceed five years.

Admittedly, the impugned notification is issued by the Government in exercise of the powers conferred by Sub Sections (1) and (2) of Section 3 of the Act 19 of 1971 and the Government declared that the second respondent is deemed to be a Relief Undertaking for the purpose of the said Act. The validity of the notification is for a period of one year from 25-9-2004. As per the said notification, the Government directed that in relation to the relief undertaking of the second respondent for the said period of one year, the relief undertaking shall continue as such in pursuance of the notification. In pursuance of the notification issued by the Government Order, the reliefs given to the second respondent are that the Industrial Employment (Standing Orders) Act, 1946, Industrial Disputes Act, 1947, the Andhra Pradesh Co-operative Societies Act, 1964 shall not apply. Apart from that any right or privilege accrued to workmen and other employees, except in so far as they relate to wages and salaries of the workmen and other employees and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any Court, Tribunal, Officer or Authority shall be stayed.

As per Clause (iii) of the notification-II issued by the said impugned G.O.Rt.No.639, dated 6-10-2004, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relating thereto pending before any Court, Tribunal, Officer or Authority shall be stayed. Therefore, the E.P., could not be executed.

The only question that arises for consideration as to whether the Government is entitled to declare any undertaking to be a relief undertaking by issuing similar notifications in respect of all periods in aggregate, exceeding five years.

Under Sub Section (1) of Section 3, the Government can issue the notification at a time not more than the period of 12 months, declaring any such undertaking to be a relief undertaking for the purpose of the Act. Under Sub Section (2) of Section 3, further notification can be issued for a period not exceeding 12 months and such notifications can be renewable by like notifications from time to time for further periods not exceeding 12 months at a time, but however, all the periods in aggregate shall not exceed five years. Section 3(2) of the said Act empowers the Government to issue such notifications from time to time declaring any such undertaking to be a relief undertaking for the purpose of Act, but all the periods in aggregate shall not exceed five years. In the instant case, admittedly, the Government have issued eight G.Os., and the State Government is entitled to declare any undertaking to be a relief undertaking for a total period in aggregate of all the notifications not exceeding five years only. G.O.Rt.No.116, which was questioned earlier for the fifth period alone not exceeded five years and therefore, this question has not been arose in the said writ petition as to whether the said notification was contrary to the said Act on the ground that the aggregate periods of all notifications exceeded five years. Admittedly, the impugned notification issued is the 8th notification and the period of reliefs were already given to the second respondent for a period of seven years. Even after exceeding seven years relief period, the first respondent

has chosen to issue the impugned notification giving the relief period of one more year i.e., 8th year also, which do not empower the Government to issue such a notification and therefore, the said notification is illegal and contrary to Sub Section (2) of Section 3 of the Act, 19 of 1971.

Therefore, I am of the opinion that there is no any justification on the part of the respondents in issuing the impugned notification and accordingly, the impugned G.O.Rt.No.639, dated 6-10-2004 is declared as illegal and altravires to the provisions of Sub Section (2) of Section 3 of Act 19 of 1971. It is not open for the respondents to take objection in the pending execution petition on the ground that the second respondent is declared to be a relief undertaking.

The Writ Petition is allowed accordingly. No costs.

V.ESWARAIAH, J

Date: 15-03-2005.

Shr.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the fifteenth day of March, two thousand and five.

Asst.Registrar.

One copy to the Hon'ble Sri Justice V.Eswaraiah

(For his Lordship's kind perusal)

To

1. The Principal Secretary to the Government of Andhra Pradesh, Industries Department, Secretariat Buildings, Saifabad, Hyderabad.
2. The Managing Director of M/s.Nandyal Cooperative Spinning Mills Ltd. Nandyal, Kurnool District.
3. Two CCs., to the G.P., for Industries and Commerce, High Court buildings, Hyderabad.
4. Eight L.R. copies.
5. The Under Secretary, Union of India, Ministry of Law & Justice and Company Affairs, New Delhi.
6. The Secretary, A.P.Advocates' Association,Library, High Court Buildings, Hyderabad.
7. Two CD copies.